

## STATE BOARD OF ELECTIONS

## NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Administrative Complaint Procedures for Violations of Title III of HAVA
- 2) Code Citation: 26 Ill. Adm. Code 150
- 3) 

<u>Section Numbers</u> :	<u>Adopted Action</u> :
150.5	New
150.10	New
150.15	New
150.20	New
150.25	New
150.30	New
150.35	New
150.40	New
150.45	New
150.50	New
150.55	New
150.60	New
150.65	New
150.70	New
150.75	New
150.80	New
150.85	New
150.90	New
150.95	New
150.98	New
150.100	New
150.105	New
150.110	New
150.115	New
150.120	New
150.125	New
150.130	New
150.135	New
150.140	New
150.145	New
- 4) Statutory Authority: Authorized by Title IV Section 402 of the Help America Vote Act [HAVA] codified at 42 USC 15301 to 15545 and Section 10-5 of the Illinois Administrative Procedure Act [5 ILCS 100/10-5].

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- 5) Effective Date of Rulemaking: August 25, 2005
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference? No
- 8) A copy of the adopted rules, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: 28 Ill. Reg. 15716; December 10, 2004
- 10) Has JCAR issued a Statement of Objection to these rules? No
- 11) Differences between proposal and final version: In addition to nonsubstantive, technical changes, the following changes were made in agreement between the proposal and final version.

In the Table of Contents, added a new section heading that reads "150.98 Notice of Hearing", and Section 150.130 was revised to read "Order of Proceeding, Record, Recommendation and Notice".

In the AUTHORITY, in the second line, "110" was changed to "10" in "[5 ILCS 100/10-5]" Also, "and Section 1A-8(9) of the Election Code [110 ILCS 5/1A-8(9)]" was added in the last line.

In Section 150.10, in the definition of "Election Code", added "Election" before "Code". In the definition "Hearing", "closed" was deleted before "preliminary", and "(b)" was changed to "(c)". In the definition "Respondent", after "means", added "an Election Authority, the State Board of Elections, or any other" and deleted "any named".

In Section 150.20(c), after "attorney", added ".The address and fax number provided by the complainant may be relied upon by all other parties for the transmission of all documents pursuant to Section 150.35" and deleted "or his authorized representative and the designation of such address or fax number shall be deemed to be consent by the complainant to have a copy of all documents filed or to be filed thereafter served upon the party at such address or fax number."

In Section 150.25, in the third line after "attorney", deleted "or authorized representative".

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In Section 150.30(b), "Preliminary Review" was added as the heading for subsection (b).

In Section 150.30(b)(2), "provisions of the" was deleted in the fourth sentence, the ending period was deleted, and ", within the parameters of Sections 9-22, 10-10.01 and 17-33 of the Election Code." was inserted.

In Section 150.30(c), deleted "closed" before "preliminary". In the last sentence, deleted "provisions of the" and inserted ", within the parameters of Sections 9-22, 10-10.01 and 17-33 of the Election Code".

In Section 150.30(d), deleted "provisions of the" and inserted ", within the parameters of Sections 9-22, 10-10.01 and 17-33 of the Election Code", in the last sentence.

In Section 150.30(f), deleted "cannot resolve the issues raised in" and added "fails to render a final determination with respect to" after "Board".

In Section 150.35, in the second line after "attorney", deleted "or other authorized representative".

In Section 150.40, in the first line, changed "150.30(e)" to "150.30(f)". In the last line of Section 150.40, added "Election" before "Code".

In Section 150.45, revised language to read: "The parties to a complaint filed pursuant to this Part may appear on their own behalf or by an attorney at law who is licensed to practice in the State of Illinois. Any person appearing pro se or by an attorney shall file a written notice of appearance with the hearing examiner. The appearance form may be submitted at the beginning of the hearing; however, if no hearing is requested by the complainant, the appearance form shall be submitted to the hearing examiner, pursuant to Section 150.35, within 15 business days after the filing of the complaint."

In Section 150.50, added a period after "proceedings" and added new language that reads: "The State Board of Elections, including any hearing examiners, shall provide any required assistance to persons with disabilities. Assistance may include, but is not limited to, sign language interpreters, large print or Braille materials and access to the location of any hearings or meetings of the Board."

In Section 150.75, in the eighth line, deleted "five" and added "10", and in the ninth line after "received", added "by the General Counsel pursuant to Section 150.35" and changed "three" to "five" before "business".

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In Section 150.85, in the last line, deleted "and may order additional parties to be brought in pursuant to the provisions of Section 150.60".

Added a new Section 150.98 that reads: "The hearing examiner shall provide written notice to the parties not less than 10 business days prior to the hearing. The notice shall include the date, time and location of the hearing and be sent via fax and certified mail with a requested return receipt.".

In Section 150.105, added a sentence to the end of the paragraph that reads: "Any undue delay, caused by either party may be grounds for assignment of alternative dispute resolution service costs to that party, pursuant to Section 150.145.".

In Section 150.115, added an opening sentence that reads: "The hearing is an inquiry to elicit evidence on the question of whether the complaint is sufficiently grounded in fact and law."

After Section 150.115(c), added new subsections (d), (e), and (f) that read:

- "d) Any person offering evidence, written or oral, shall affirm to the hearing examiner that his or her evidence is true to the best of their information and belief;
- e) The hearing examiner may admit and rely upon, for his recommendation, evidence or information of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs;
- f) Evidence may be submitted in narrative form."

In Section 150.125(a), after "Administrative Procedure Act", added "and Section 9-18 of the Election Code".

In Section 150.125(b)(2), added a new sentence that reads: "The subpoena in this instance may provide that personal attendance is not required.".

In Section 150.125(c), the language was revised to read: "The party requesting the issuance of a subpoena compelling personal attendance shall tender with the subpoena a check reimbursing the witness for the round trip cost of travel between the witness's place of residence and the place where his or her presence is requested. Reimbursement shall be equal to that provided by the Governor's Travel Board for reimbursement of State employees traveling on official State business.".

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In the heading of Section 150.130, "Scope of Hearing, Procedures and Evidence" was deleted and "Order of Proceeding, Record, Recommendation and Notice" was inserted.

In Section 150.130(a), language was changed to read: "The complainant shall present his or her case first unless the hearing examiner concludes that overall fairness demands a different order or the parties consent to a different order of presentation, approved by the hearing examiner."

In Section 150.130, deleted subsections (a)(1), (2), (3), (4) and (5).

In Section 150.130(c), in the last line, added "and General Counsel" after "examiner".

In Section 150.130, added a new subsection (d) that reads: "The State Board of Elections shall provide written notice to the parties not less than seven business days prior to the meeting of the State Board of Elections at which the complaint will be presented for final Board disposition. The notice shall include the time, date and location of the meeting and be sent via fax and certified mail with a requested return receipt."

In Section 150.135(a)(1), added "of the hearing examiner, the transcript of the proceedings, and all admitted evidence to".

In Section 150.135(a)(2), in the last line, deleted "therefore" and added "for the nonconcurrence".

In Section 150.135(b), the language was revised to read: "If the Chairman of the Board determines that circumstances exist that would make it impossible for the General Counsel to provide a written recommendation to the Board, the recommendation may be given orally. For purposes of making the official record complete, the General Counsel shall, within three business days of giving his oral recommendation, create a written recommendation setting forth the same analysis and reasoning as that contained in the oral recommendation. The written recommendation shall be sent to the parties pursuant to Section 150.35."

In Section 150.140(a), the language was revised to read: "After the submission of the recommendation of the hearing examiner, the transcript (if requested by the Board), and the recommendation of the General Counsel, the Board shall make a final determination of whether the complaint was sufficiently grounded in fact and law and the determination shall be set forth in the form of a Board Order. If the Board determines that the complaint was sufficiently grounded in fact and law, the Board shall, in its order, take

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whatever action it is authorized under federal or State law and deems appropriate under the circumstances to correct the matter complained of and shall provide a timeframe in which its order must be complied with and the consequences of failure to comply. If the Board determines that the complaint is not sufficiently grounded in fact and law, and does not allege a violation of Title III of the Act, then the Board shall dismiss the complaint or refer it to the proper agency or department for consideration. Regardless of the Board's disposition of the matter, the Board shall issue a written final order, subject to the Administrative Review Law, within the parameters of Sections 9-22, 10-10.01 and 17-33 of the Election."

In Section 150.140, a new subsection (c) was added that reads: "All final orders shall be posted on the State Board of Elections website. In addition, copies of the orders shall be given to the parties and be made available to the public."

In Section 150.145, the language was revised to read: "If the State Board of Elections fails to resolve the complaint within 90 days after its filing, or the parties refuse to waive the 90 day deadline, the Board shall select a person, company or association providing dispute resolution services ("the service provider") to resolve the matter. If the parties object to the Board's selection, they shall be provided an opportunity to select a service provider and their selection shall then be presented to the Board. The Board shall select the service provider in consultation with the parties. If the Board and the parties fail to agree on the choice of the service provider, the names of the selections shall be placed in a container and the service provider shall be determined by lot, drawn by the Chairman of the Board. If the complainant names the Board as a respondent and does not waive his or her right to alternative dispute resolution pursuant to Section 150.30 and the choice of service provider cannot be mutually agreed upon, the Board and the complainant shall select a service provider whose name shall be placed in a container and determined by lot, drawn by the complainant. In all circumstances, the service provider shall have at least two years experience in providing mediation services in Illinois. Pursuant to Section 402 (a)(I) of HAVA, the matter shall be resolved within 60 days after its referral and this time limitation shall be included in any contract for the provision of alternative dispute resolution services. Costs of the service shall be borne by the Board. The record from any hearing conducted within this Part shall be made available for use by the service provider to have costs of the services shifted to either party. The decision of the service provider shall be subject to judicial review. The Board may petition the service provider to have the costs of the services shifted to either party. The petition shall set forth facts warranting the shifting of costs and must show at a minimum that the Board was not properly named as respondent, a determination was made by the service provider that the complaint was completely lacking any basis in fact or law, or unreasonable delay

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caused by the party resulted in the matter not being resolved by the Board within the original 90-day time period."

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes
- 13) Will this rulemaking replace any emergency rulemaking currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Rulemaking: This adopted Part establishes the procedures to be used by anyone who files a complaint with the State Board of Elections alleging a violation of Title III of HAVA, codified in 42 USC 15301 to 15545. The complaint must be filed within 90 days after the violation or the federal election in which the violation occurred; it must be in writing, stating the specific nature of the violation; it must be signed by the complainant and notarized; and it must be sufficiently grounded in law and in fact. The complaint must then be served by the complainant upon the respondent, who is defined as any entity subject to the provisions of Title III of HAVA.

The general counsel of the State Board of Elections will conduct a preliminary review of the complaint to determine if it alleges a violation of Title III of HAVA and pertains to a federal election and to determine whether the complaint alleges sufficient facts to constitute a cause of action. If it is so determined, then the complaint will be assigned to a hearing examiner and proceed to either a public hearing (if requested by the complainant), or a review, or both to determine whether the complaint is sufficiently grounded in fact and law. After the public hearing or review, the hearing examiner will give a written recommendation that shall be given to both parties, the general counsel and the Board. The matter will then be presented to the Board for final disposition with the granting of the appropriate relief.

If the general counsel determines that the complaint is not sufficient or does not allege a violation of Title III of HAVA, the complaint will be presented to the Board for either dismissal or referral to the appropriate enforcement agency for further action. With the exception of the preliminary review of the general counsel, at all times during the course of the proceedings, the complainant and respondent will be given an opportunity to be present at any hearing or Board deliberation and to offer evidence and argument.

If the complaint names the Board as a respondent, the matter will proceed directly to an alternative dispute resolution service unless waived by the complainant.

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The complaint must be resolved by the Board within 90 days after the filing of the complaint. If the complaint cannot be resolved within such time and the complainant does not waive the deadline, the matter must be turned over to an alternative dispute resolution service. The matter must then be resolved within 60 days following the transfer of the case.

The adopted Part also establishes general procedures for administrative complaint proceedings that closely track the procedures in place to administer complaints filed under the Campaign Finance Act.

- 16) Information and questions regarding these Adopted Rules shall be directed to:

Steven S. Sandvoss  
General Counsel  
State Board of Elections  
1020 S. Spring St.  
Springfield IL 62704

217/557-9939

The full text of the Adopted Rules begins on the next page.



TITLE 26: ELECTIONS  
CHAPTER I: STATE BOARD OF ELECTIONS

PART 150  
ADMINISTRATIVE COMPLAINT PROCEDURES  
FOR VIOLATIONS OF TITLE III OF HAVA

Section	
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150.145	Alternative Dispute Resolution

AUTHORITY: Authorized by Title IV Section 402 of the Help America Vote Act (HAVA) (42 USC 15512) and Section 10-5 of the Illinois Administrative Procedure Act [5 ILCS 100/10-5] and Section 1A-8(9) of the Election Code [10 ILCS 5/1A-8(9)].

SOURCE: Adopted by emergency rulemaking at 28 Ill. Reg. 15840, effective November 24, 2004, for a maximum of 150 days; emergency expired April 23, 2005; new Part adopted at 29 Ill. Reg. 13711, effective August 25, 2005.

### **Section 150.5 Applicability**

This Part shall apply to the procedures utilized by the State Board of Elections to resolve complaints filed pursuant to Title IV Section 402 of the Help America Vote Act. This Part is authorized by the Act and Section 10-5 of the Illinois Administrative Procedure Act [5 ILCS 100/10-5].

### **Section 150.10 Definitions**

As used in this Part, the following terms shall have the meanings specified:

"Act" means the Help America Vote Act (Public Law 107-252; 42 USC 15301) and all amendments.

"Board" means the State Board of Elections.

"Complainant" means a party initiating a proceeding under the Act by the filing of a complaint.

"Election Authority" means the county clerk in all counties that do not have a county board of election commissioners, the county board of election commissioners in those counties that have adopted the provisions of Article 6A of the Election Code and the city board of election commissioners in those cities that have adopted the provisions of Article 6 of the Election Code.

"Election Code" means the Illinois Election Code [10 ILCS 5].

"Federal Election" means any election in which candidates for federal office are scheduled to be elected or nominated. For purposes of this definition, federal offices are President and Vice President of the United States, United States Senator, Representative in the United States Congress, delegates and alternate delegates to the national nominating convention and candidates for the Presidential Preference Primary.

"Hearing" means the preliminary hearing held pursuant to Section 150.30(c).

"Respondent" means an Election Authority, the State Board of Elections, or any other entity subject to the provisions of Title III of HAVA against whom a complaint is filed.

**Section 150.15 Filing of a Complaint**

Any person who believes that a violation of any provision of Title III of the Act has occurred, is occurring or is about to occur may file a complaint with the State Board of Elections. The complaint must be filed no later than 90 days after the occurrence of the violation or 90 days after the federal election in connection with which the violation occurred, whatever date is later. Any complaint filed under this Section must allege a violation of Title III of the Act, state specifically the nature of the violation and be sufficiently grounded in fact and in law. In addition, the complaint must state whether the complainant desires a hearing on the record before the State Board of Elections.

**Section 150.20 Form of Complaint**

- a) All complaints filed under this Part shall be in writing and signed and sworn to (or affirmed) by the person filing the complaint and shall be notarized. In addition, the complaint shall contain the following:
- 1) The complaint shall be directed to and state the name of the respondent against whom the complaint is directed;
  - 2) The complaint shall state the provisions of the Act alleged to have been violated;
  - 3) The complaint shall state the time, place and nature of the alleged offense; and
  - 4) The complaint shall be verified, dated and signed by the complainant in substantially the following manner:

**Verification**

"I declare that this complaint (including any accompanying exhibits and statements) has been examined by me and to the best of my knowledge and belief is a true and correct complaint as required by Section 402 of the Help America Vote Act."

Signed and sworn to (or affirmed) by

\_\_\_\_\_  
Name of Complainant

before me on this \_\_\_\_\_ day of 20 \_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public

(SEAL OF NOTARY)

- b) Upon filing of a complaint, the office of the General Counsel shall assign a docket number to the complaint and proceeding, and all documents thereafter filed pertaining to that particular complaint or proceeding, shall include the docket number first assigned.
- c) The complaint shall bear the address, telephone number and fax number of the complainant or of his attorney. The address and fax number provided by the complainant may be relied upon by all other parties for the transmission of all documents pursuant to Section 150.35.

**Section 150.25 Service of Complaint**

The complainant shall serve a copy of the complaint upon the respondent. Service shall be complete when the document is served as provided in the Civil Practice Law [735 ILCS 5/2-203(a)], in person upon the party or his attorney, or deposited for mailing with the United States Postal Service, postage prepaid, registered or certified, addressed to the party.

**Section 150.30 Preliminary Review of Complaint**

- a) Any complaint naming an election authority as respondent shall proceed under subsections (b) through (e). A complaint properly naming the Board as respondent shall proceed to the alternative dispute resolution procedures set out in Section 150.145, unless the complainant waives this provision and agrees to proceed under subsections (b) through (e). The waiver shall be in writing and signed by the complainant. A complaint naming both the Board and an election authority as respondents shall be separated for jurisdictional purposes with each respondent subject to the procedures set out in the first two sentences of this subsection.
- b) Preliminary Review
  - 1) Upon the filing of a complaint naming an election authority as respondent or upon the filing of a complaint naming the Board as a respondent and containing a waiver as provided in subsection (a), the General Counsel shall perform a preliminary review to determine whether the complaint meets the following requirements to constitute a valid complaint under the Act.
    - A) The complaint alleges a violation under Title III of the Act;
    - B) The complaint pertains to a federal election; and

- C) The complaint states sufficient facts as to constitute a cause of action under the Act for which the Board can grant appropriate relief.
- 2) If the General Counsel determines that the complaint meets the above criteria for a valid complaint under the Act, then the complaint shall proceed under subsections (c) and (d). If the General Counsel determines that the complaint has not met the above criteria for a valid complaint under the Act, the complaint shall be presented to the Board for a final determination of its status. In addition, the complainant shall be notified in writing of the General Counsel's determination of the complaint's invalidity and be given an opportunity to appear before the Board to show cause as to why the complaint should not be dismissed. The decision of the Board as to the status of the complaint shall be in the form of a final order subject to appeal under the Illinois Administrative Review Law, within the parameters of Sections 9-22, 10-10.01 and 17-33 of the Election Code. As an alternative to summary dismissal of the complaint, the Board may determine that the complaint alleges a violation of the Election Code and refer it for investigation to the appropriate division of the Board or to the appropriate election authority or law enforcement agency.
- c) After a determination by the General Counsel that the complaint meets the criteria set out in subsection (b), and upon the written request of the complainant, the Board shall appoint a hearing examiner to conduct a preliminary hearing. This hearing shall be held to determine whether the complaint is sufficiently grounded in fact and law. The request must be a part of or accompany the complaint when filed. Following the hearing, the hearing examiner shall make a written recommendation as to whether the complaint is sufficiently grounded in fact and law and a copy of the recommendation shall be given to the General Counsel for his recommendation and to both parties to the complaint. Upon receipt of the recommendation of the hearing examiner and the General Counsel, the Board shall make a final determination as to the merits of the complaint and shall make a decision as to what, if any, action should be taken as a result of the complaint. The final determination and decision shall be in the form of a final order subject to appeal under the Illinois Administrative Review Law, within the parameters of Sections 9-22, 10-10.01 and 17-33 of the Election Code.
  - d) Should the complainant fail to request a hearing, the Board shall appoint a hearing examiner to make a recommendation based solely on the complaint, any evidence submitted with the complaint and any response offered by the respondent as to whether the complaint is sufficiently grounded in fact and law. The hearing examiner shall allow the respondent an opportunity for a hearing to present

evidence supporting any offered defense (both documentary and/or testimonial) prior to the hearing examiner submitting the recommendation to the General Counsel. The complainant shall be given notice and an opportunity to be present and participate in the hearing; however, failure of the complainant to appear at the hearing shall not factor into the hearing examiner's recommendation as to whether the complaint is sufficiently grounded in fact and law. After considering all evidence presented by the parties, the hearing examiner shall prepare a written recommendation to be given to the General Counsel for his recommendation and to the parties to the complaint. Upon receipt of the recommendation of the hearing examiner and the General Counsel, the Board shall make a final determination as to the merits of the complaint and shall make a decision as to what, if any, action should be taken as a result of the complaint. The final determination and decision shall be in the form of a final order subject to appeal under the Illinois Administrative Review Law, within the parameters of Sections 9-22, 10-10.01 and 17-33 of the Election Code.

- e) The proceedings of the hearing shall be recorded either by a certified court reporter or by means of an electronic recording device. Any party may provide for his or her own recording of the proceedings of the hearing utilizing a court reporter or any other recording device. Any associated costs, however, shall be borne by the party providing for the recording.
- f) The Board shall render a final determination of the matters alleged in the complaint within 90 days after the filing of the complaint. The time period may be extended by a written waiver of the complainant. If the Board fails to render a final determination with respect to the complaint by the end of the 90 day period and no such waiver is provided by the complainant, then the Board shall order the matter to be resolved by an alternative dispute resolution mechanism described in Section 150.145.

### **Section 150.35 Documents Pertaining to Hearings**

All documents, including but not limited to complaints, notices and motions, shall be filed with the hearing examiner and a copy shall be served upon the adverse party or its attorney as provided by Section 150.25 or, if agreed to by the parties, facsimile or electronic mail transmission.

### **Section 150.40 Computation of Time**

Computation of the 90 day period of time mandated by Section 150.30(f) shall begin with the first day following the day on which the complaint is filed and shall run until the end of the 90<sup>th</sup> day, or the next following business day if the 90<sup>th</sup> day is a Saturday, Sunday or State holiday as defined in Section 1-6 of the Election Code.

**Section 150.45 Appearances**

The parties to a complaint filed pursuant to this Part may appear on their own behalf or by an attorney at law who is licensed to practice in the State of Illinois. Any person appearing pro se or by an attorney shall file a written notice of appearance with the hearing examiner. The appearance form may be submitted at the beginning of the hearing; however, if no hearing is requested by the complainant, the appearance form shall be submitted to the hearing examiner, pursuant to Section 150.35, within 15 business days after the filing of the complaint.

**Section 150.50 Non-Legal Assistance**

Any party involved in the complaint proceeding shall have the right to the presence and participation of additional persons in order to provide technical assistance and/or consultation. To maintain order, the hearing examiner may at his discretion restrict the number of additional persons who may attend and participate in the proceedings. The State Board of Elections, including any hearing examiners, shall provide any required assistance to persons with disabilities. Assistance may include, but is not limited to, sign language interpreters, large print or Braille materials and access to the location of any hearings or meetings of the Board.

**Section 150.55 Designation of Parties**

If a complete determination of the complaint cannot be had without the presence of other parties, the hearing examiner or the Board may direct them to be brought in. Service of process shall be as provided in Section 150.25 and any subsequent motions and other documents shall be as provided in Section 150.35.

**Section 150.60 Answer**

Any respondent may file a written answer to a complaint prior to or at the time of any proceeding or hearing, but shall not be required to file an answer. The failure to file an answer shall not be deemed an admission of any allegation in the complaint nor a consent to any requested relief. The answer shall be filed with the hearing examiner and at least one copy shall be served upon all other parties to the proceeding, pursuant to Section 150.35.

**Section 150.65 Appointment and Qualifications of Hearing Examiner**

Within 5 business days after the filing of a complaint, the General Counsel shall appoint a hearing examiner to hear the complaint who shall be a licensed attorney in the State of Illinois. Written notice of the appointment of the hearing examiner shall be provided to the parties within 5 business days after his or her appointment.

**Section 150.70 Authority of Hearing Examiner**

The hearing examiner has the authority to conduct and preside over the hearing and is empowered to take all necessary action to avoid delay, to maintain order, to ensure compliance with all requirements contained in this Part, and to ensure the development of a clear and complete record and shall have all powers necessary to conduct a fair and impartial hearing.

#### **Section 150.75 Disqualification of Hearing Examiner**

Any party to a hearing may file a written request for disqualification of the hearing examiner, setting forth the nature of the personal bias, prejudice, or other grounds for disqualification. The request shall be made to the General Counsel who will make the decision as to whether the hearing examiner should be disqualified. When a hearing examiner is disqualified, or it becomes impractical for him or her to continue, another hearing examiner shall be appointed in the same manner as provided for the initial appointment. A hearing examiner may at any time voluntarily disqualify himself or herself. A request for disqualification made by a party shall be considered timely if made within 10 business days after the dispatch of the notice of the appointment of the hearing examiner and, if received by the General Counsel pursuant to Section 150.35, at least five business days prior to the commencement of the hearing.

#### **Section 150.80 Motions**

Unless otherwise directed by the hearing examiner, motions shall be in writing and submitted to the hearing examiner and the adverse party prior to the hearing, pursuant to Section 150.35. Where the Board is conducting a hearing to determine the final disposition of the complaint, motions shall be received as directed by the Board.

#### **Section 150.85 Consolidation and Severance of Claims: Additional Parties**

In the interest of convenience and the expeditious and complete determination of claims, the hearing examiner or the Board may consolidate or sever complaints involving any number of parties.

#### **Section 150.90 Amendments**

Complaints may be amended under any of the following circumstances:

- a) at the request of the General Counsel following the preliminary review referred to in Section 150.30(a);
- b) to correct any technical defects;
- c) to conform to the evidence presented at the hearing;



- d) to conform to new matters that arise at the hearing if it appears from the original and amended complaint that the cause of action asserted in the amended complaint grew out of the same transaction or occurrence.

#### **Section 150.95 Pre-Hearing Conferences**

- a) At the request of the hearing examiner or either party and prior to the hearing, the hearing examiner may direct the parties or their attorneys to appear at a specified time and place for a conference, for the purposes listed in this subsection (a). The purposes for these conferences shall include:
  - 1) the simplification of issues;
  - 2) the necessity or desirability of amending the complaint;
  - 3) the possibility of stipulations of fact;
  - 4) the limitation of the number of witnesses;
  - 5) and other matters that may aid in the simplification of the evidence and disposition of the proceeding.
- b) In exercising discretion, the hearing examiner shall give due consideration to the time requirements of Section 150.30(f).

#### **Section 150.98 Notice of Hearing**

The hearing examiner shall provide written notice to the parties not less than 10 business days prior to the hearing. The notice shall include the date, time and location of the hearing and be sent via fax and certified mail with a requested return receipt.

#### **Section 150.100 Settlement Pursuant to Conference**

At any time prior to or during the hearing, an opportunity shall be afforded all parties to dispose of the case by written stipulation, agreed settlement or consent order, unless otherwise precluded by law. Any stipulation, agreed settlement, or consent order shall be submitted in writing to the Board and shall become effective only if approved by the Board.

#### **Section 150.105 Continuances**

A hearing may be continued for good cause by the hearing examiner upon his own motion or upon motion of a party to the hearing after due consideration of any time limitations required by law or by this Part. Notice of any postponement or continuance shall be given to all parties at

least 3 business days in advance of the previously scheduled hearing date, pursuant to Section 150.35. All parties involved in a hearing shall attempt to avoid undue delay caused by repetitive continuances so that the hearing may be resolved expeditiously. Any undue delay, caused by either party may be grounds for assignment of alternative dispute resolution service costs to that party, pursuant to Section 150.145.

### **Section 150.110 Failure of Party to Appear**

Failure of the respondent to appear on the date set for a hearing shall not deter the hearing from proceeding unless the hearing examiner shall, for good cause, order a continuance. Failure of the complainant to appear on the date set for hearing without good cause shown shall be grounds for dismissal of the complaint for want of prosecution.

### **Section 150.115 Evidence**

The hearing is an inquiry to elicit evidence on the question of whether the complaint is sufficiently grounded in fact and law.

- a) Except with respect to matters of privilege, the rules of evidence as applied in civil cases in courts of this State shall not be strictly applied to hearings under this Part. Admissibility of evidence shall be liberally interpreted in order to present all matters that are or may be relevant to the issues affecting the parties. Hearsay evidence shall be admissible if deemed to be reliable and trustworthy by the hearing examiner.
- b) The hearing examiner shall exclude immaterial, irrelevant and repetitious evidence.
- c) A party may conduct direct examinations or cross-examinations without rigid adherence to formal rules of evidence, provided the examination or cross-examination can be shown to be necessary and pertinent to a full and fair disclosure of the subject matters of the hearing.
- d) Any person offering evidence, written or oral, shall affirm to the hearing examiner that his or her evidence is true to the best of his or her information and belief.
- e) The hearing examiner may admit and rely upon, for his or her recommendation, evidence or information of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.
- f) Evidence may be submitted in narrative form.

### **Section 150.120 Official Notice**

Notice may be taken of matters of which the circuit courts of this State may take judicial notice. In addition, notice may be taken of generally recognized technical or scientific facts within the Board's specialized knowledge. The Board's experience, technical competence and specialized knowledge may be utilized in the evaluation of any evidence submitted by the parties.

### **Section 150.125 Subpoenas**

- a) Pursuant to Article 10 of the Illinois Administrative Procedure Act and Section 9-18 of the Election Code, and upon application to the hearing examiner by any party, or upon the request of the hearing examiner, the Board may authorize the General Counsel to issue a subpoena for attendance at the hearing, which may include a command to produce documents or other tangible things designated in the subpoena that are reasonably necessary to resolution of the matter under consideration. The hearing examiner, upon motion, and in any event at or before the time specified in the subpoena for compliance, may quash or modify the subpoena if it is unreasonable or oppressive.
- b) Every subpoena shall state the title of the action and shall command each person to whom it is directed:
  - 1) to attend and give testimony at the time and place specified; or
  - 2) to produce books, papers, documents or tangible things designated at the time and place specified in the subpoena. The subpoena in this instance may provide that personal attendance is not required.
- c) The party requesting the issuance of a subpoena compelling personal attendance shall tender with the subpoena a check reimbursing the witness for the round trip cost of travel between the witness's place of residence and the place where his or her presence is requested. Reimbursement shall be equal to that provided by the Governor's Travel Board for reimbursement of State employees traveling on official State business.

### **Section 150.130 Order of Proceeding, Record, Recommendation and Notice**

- a) The complainant shall present his or her case first unless the hearing examiner concludes that overall fairness demands a different order or the parties consent to a different order of presentation, approved by the hearing examiner.
- b) At the close of the hearing, the hearing examiner shall summarize his or her conclusions concerning the evidence and information presented and draft a recommendation to the Board addressing the question of whether the complaint is

sufficiently grounded in fact and law. The hearing examiner shall include any documents tendered to him or her during the hearing and submit them with the recommendation to the General Counsel for his or her consideration. The General Counsel shall then present the recommendation and accompanying documentation to the Board for its final determination.

- c) The official record of a hearing shall consist of the transcript (or tape recording of the proceedings), copies of any motions submitted, documentary evidence, copies of all notices and the recommendation of the hearing examiner and General Counsel.
- d) The State Board of Elections shall provide written notice to the parties not less than seven business days prior to the meeting of the State Board of Elections at which the complaint will be presented for final Board disposition. The notice shall include the time, date and location of the meeting and be sent via fax and certified mail with a requested return receipt.

#### **Section 150.135 Responsibilities of the General Counsel**

- a) Upon receipt of a copy of the recommendation of the hearing examiner, the General Counsel shall:
  - 1) Review the recommendation of the hearing examiner, the transcript of the proceedings, and all admitted evidence to determine whether the facts support the recommendation and whether questions of law have been properly applied;
  - 2) Indicate in writing whether he or she concurs with the recommendation of the hearing examiner and, if not, state the reasons for the nonconcurrence; and
  - 3) Transmit his or her remarks and recommendation to the Board within a reasonable time prior to the meeting at which the matter will be addressed by the Board.
- b) If the Chairman of the Board determines that circumstances exist that would make it impossible for the General Counsel to provide a written recommendation to the Board, the recommendation may be given orally. For purposes of making the official record complete, the General Counsel shall, within three business days of giving his oral recommendation, create a written recommendation setting forth the same analysis and reasoning as that contained in the oral recommendation. The written recommendation shall be sent to the parties pursuant to Section 150.35.

**Section 150.140 Board Determination**

- a) After the submission of the recommendation of the hearing examiner, the transcript (if requested by the Board), and the recommendation of the General Counsel, the Board shall make a final determination of whether the complaint was sufficiently grounded in fact and law and the determination shall be set forth in the form of a Board Order. If the Board determines that the complaint was sufficiently grounded in fact and law, the Board shall, in its order, take whatever action it is authorized under federal or State law and deems appropriate under the circumstances to correct the matter complained of and shall provide a timeframe in which its order must be complied with and the consequences of failure to comply. If the Board determines that the complaint is not sufficiently grounded in fact and law, and does not allege a violation of Title III of the Act, then the Board shall dismiss the complaint or refer it to the proper agency or department for consideration. Regardless of the Board's disposition of the matter, the Board shall issue a written final order, subject to the Administrative Review Law, within the parameters of Sections 9-22, 10-10.01 and 17-33 of the Election.
- b) The Board may consider and discuss the hearing examiner's recommendation through a conference telephone call begun in open session and continued in executive session in lieu of an in-person meeting. The consideration and discussion shall be deemed part of the hearing process. Any action on the hearing examiner's recommendations must be taken in open session, or if taken as part of the telephonic conference call, that portion of the conference call shall be broadcast over a speaker phone or other similar device at the permanent and branch offices of the Board and that portion of the broadcast call shall be open to the media and public.
- c) All final orders shall be posted on the State Board of Elections website. In addition, copies of the orders shall be given to the parties and be made available to the public.

**Section 150.145 Alternative Dispute Resolution**

If the State Board of Elections fails to resolve the complaint within 90 days after its filing, or the parties refuse to waive the 90 day deadline, the Board shall select a person, company or association providing dispute resolution services ("the service provider") to resolve the matter. If the parties object to the Board's selection, they shall be provided an opportunity to select a service provider and their selection shall then be presented to the Board. The Board shall select the service provider in consultation with the parties. If the Board and the parties fail to agree on the choice of the service provider, the names of the selections shall be placed in a container and the service provider shall be determined by lot, drawn by the Chairman of the Board. If the complainant names the Board as a respondent and does not waive his or her right to alternative

dispute resolution pursuant to Section 150.30 and the choice of service provider cannot be mutually agreed upon, the Board and the complainant shall select a service provider whose name shall be placed in a container and determined by lot, drawn by the complainant. In all circumstances, the service provider shall have at least two years experience in providing mediation services in Illinois. Pursuant to Section 402 (a)(I) of HAVA, the matter shall be resolved within 60 days after its referral and this time limitation shall be included in any contract for the provision of alternative dispute resolution services. Costs of the service shall be borne by the Board. The record from any hearing conducted within this Part shall be made available for use by the service provider to have costs of the services shifted to either party. The decision of the service provider shall be subject to judicial review. The Board may petition the service provider to have the costs of the services shifted to either party. The petition shall set forth facts warranting the shifting of costs and must show at a minimum that the Board was not properly named as respondent, a determination was made by the service provider that the complaint was completely lacking any basis in fact or law, or unreasonable delay caused by the party resulted in the matter not being resolved by the Board within the original 90-day time period.